

J. A. DENNY.

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JANUARY 19, 1910.—Ordered to be printed.

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Mr. COWLES, from the Committee on Claims, submitted the following

## REPORT.

[To accompany H. R. 9447.]

The Committee on Claims, to whom was referred the bill (H. R. 9447) for the relief of J. A. Denny, having considered the same, report thereon with a recommendation that it do pass.

This bill does not provide for the payment of any money out of the Treasury, but to abate taxes assessed against the said J. A. Denny on 14 barrels of whisky, which were taken from said Denny's bonded warehouse by thieves, who, after robbing the warehouse, set fire to it and completely destroyed it. Six barrels of the 14 barrels of whisky were recovered as a result of a search made by said Denny and were delivered to J. C. Horton, a deputy collector, and were sold by him for the tax, the gross proceeds of the sale amounting to \$264.12. The remaining 8 barrels of whisky, as shown by the evidence filed with the committee, were disposed of by the persons who committed the robbery, 5 of the barrels being destroyed by them, according to the admission of Harve Church, one of the defendants, who, when asked what had become of the other 3 barrels, said: "They had drunk it, sold it, and given it away."

Millard M. Calloway and Harve Church were convicted in the federal court for robbing and burning the warehouse aforesaid, and were both sentenced to a term in the penitentiary at Albany.

The facts in the case are set out fully in the following letters and affidavits which are attached hereto and are made a part of this report:

SIR: Replying to your letter of the 27th ultimo, inclosing bill (H. R. 20407) for the relief of J. A. Denny, authorizing and directing the Commissioner of Internal Revenue to abate a tax of \$669.76 on distilled spirits assessed against said Denny, proprietor of a distillery, in the year 1895, I have the honor to submit the following:

It appears from the records of the office of the Commissioner of Internal Revenue that on July 9, 1895, distillery warehouse No. 2793 in the fifth North Carolina district, owned by J. A. Denny, was robbed of a portion or all of the spirits therein contained, and the warehouse with whatever spirits remained therein was totally destroyed by fire by the persons who committed the robbery, and that thereafter two persons were arrested and convicted of the offenses of the larceny of the spirits

and the burning of the warehouse. The tax on the spirits contained in the warehouse at the time of the robbery and fire was assessed, and subsequently claim for the abatement of the same was filed. This claim was rejected on June 6, 1907, for the reason that there was no evidence to show that any portion of the spirits contained in the warehouse was destroyed by fire, or what portion, if any, was removed before the destruction of the warehouse, and for the further reason that there is no provision of law authorizing relief in cases where spirits are stolen.

As the records of the office of the Commissioner of Internal Revenue do not show what part of the spirits were actually removed, or who was benefited by such removal, there is no evidence upon which to base an opinion as to the merits of this bill.

Respectfully,

GEO. B. CORTELYOU,  
*Secretary.*

The CHAIRMAN COMMITTEE ON CLAIMS,  
*House of Representatives.*

MY DEAR SIR: In reply to your inquiry as to the bill you have introduced in Congress (H. R. 20407) for the relief of J. A. Denny, I have the honor to refer you to the letter from the Secretary to the chairman of the Committee on Claims, dated May 2, 1908, for the reasons why it was not possible under the law for this bureau to direct the abatement of the tax on the spirits stolen and destroyed.

While this bureau could not direct the abatement of the taxes because it appeared that the spirits were removed—evidently stolen—just before the burning of the warehouse, as a matter of fact it seems that the claim is entirely a meritorious one for the relief which can only be obtained through Congress.

Yours, very truly,

JOHN G. CAPERS,  
*Commissioner.*

HON. R. N. HACKETT, M. C.,  
*Washington, D. C.*

NORTH CAROLINA, *Watauga County:*

This day personally came before me, Thomas Bingham, clerk of the superior court of said county and State, J. C. Horton, who, after being duly sworn, deposes and says that he was deputy collector of internal revenue of the fifth division of the fifth district of North Carolina from some time in 1894 to the year 1898. And during his term of office he had charge of the distillery of John A. Denny, No. 2793, and about the month of July, 1895, he was informed that the warehouse of said distillery was burned, together with its contents; that upon investigation he found little evidence of the whisky having been consumed; that he made search for the contents of the warehouse, believing them to have been stolen, but found nothing on that day.

Afterwards he was notified by John A. Denny that 6 barrels of the whisky had been found by a search warrant and which whisky was turned over to him and sold by this affiant under instructions from the collector, Samuel L. Rogers; that he is informed and believes that the said John A. Denny prosecuted one Harve Church and one Millard Calloway for said robbery and burning or that he aided in said prosecution and conviction. This affiant further states that there was no suspicion in any way, so far as he ever knew, that the said John A. Denny was in any way blamable for said burning and robbery of said warehouse.

J. C. HORTON.

Sworn to and subscribed before me this April 13, 1908.

THOS. BINGHAM,  
*Clerk Superior Court.*

NORTH CAROLINA, *Watauga County:*

This day came before me, Thomas Bingham, clerk of the superior court of said county and State, W. L. Bryan, United States commissioner for the western district of North Carolina, who, being duly sworn, deposes and says that on the 26th and 27th of July, 1895, in the case of *The United States v. M. M. Calloway and Harve Church* for breaking into and removing whisky from the government warehouse at the distillery of John A. Denny, No. 2793, that said defendants were tried on said

26th and 27th of July, 1895; that said defendants were held to the next term of district court at Statesville, N. C.; and that the said M. M. Calloway gave bond for his appearance at said court at fall term, 1895; and that said Harve Church was committed to jail in default of bail; and that said John A. Denny, proprietor of said distillery No. 2793, aided in the prosecution of the said defendants.

W. L. BRYAN,  
*United States Commissioner,*

Sworn to and subscribed before me this 14th day of April, 1908.

THOS. BINGHAM,  
*Clerk Superior Court of said County.*

*NORTH CAROLINA, Watauga County:*

This day personally appeared before me, Thos. Bingham, clerk of the superior court of said county and State, N. N. Colvard, who, being duly sworn, deposes and says that he was deputy United States marshal under J. T. Allison, marshal of the western district of North Carolina from 1893 to 1897; that about the 1st day of July, 1895, he was sent for by John A. Denny, proprietor of distillery No. 2793, and informed by him that the government warehouse belonging to said distillery had been robbed and burned; that he made search for the stolen whisky on that day for several hundred yards around said premises but found nothing.

Afterwards, in about two or three weeks, he was sent for by John A. Denny, who informed him that he, Denny, had sworn out a search warrant and had found six barrels of whisky, a portion of which was found buried under the spring house of Harve Church; that said whisky was turned over by John A. Denny to J. C. Horton, deputy collector of the fifth division of the fifth district of North Carolina; that said whisky was sold for the tax by said Horton; that afterwards, about the 15th of July, 1895, warrants came into his hands, issued by W. L. Bryan, United States commissioner for the western district of North Carolina, against Harve Church and M. M. Calloway charged with burning said warehouse; that he arrested them under said warrants and carried them before said United States commissioner on or about the 25th of July, 1895, and their trial came on before the commissioner on the 26th day of July, 1895; that Harve Church and M. M. Calloway were bound over to the fall term of the federal court at Statesville.

Said Church and Calloway were both sentenced to a term in the penitentiary at Albany, N. Y.; that said prosecution was aided and pressed by the said John A. Denny, owner of said distillery No. 2793; and affiant further states that no suspicion rested upon said John A. Denny as having been implicated in said robbery and burning, but, on the contrary, he procured the evidence upon which said Church and Calloway were convicted for said crime. Affiant further states that Harve Church confessed at said court at Statesville, N. C., that he had aided in said robbery and burning, and that all he got out of it was all the whisky he could drink. And further this deponent saith not.

NATHAN N. COLVARD.

Sworn to and subscribed before me this April 14, 1908.

THOMAS BINGHAM,  
*Clerk of the Superior Court of Watauga County.*

*NORTH CAROLINA, Wilkes County:*

John A. Denny, being duly sworn, deposes and says: That in the year 1895 he was the proprietor of grain distillery No. 2793, located at Triplett, N. C.; that at the said time the distillery was under suspension and the keys thereto in the hands of the general storekeeper; that on July 9, 1895, his distillery warehouse was burned; that said distillery was located about 1 mile from affiant's residence, and affiant was informed of the burning the next morning after it occurred; that affiant immediately started a messenger to J. C. Horton, division deputy collector in charge of that section, and proceeded to the distillery himself.

On arriving there, affiant, after looking over the ruins, became satisfied that not all of the whisky that had been stored therein had been destroyed. For the reason that no one that he knew of had been to the distillery for some weeks, he came to the conclusion that the warehouse had been robbed; that the burning was of incendiary origin; that prior to the burning there were 14 barrels of whisky in the ware-

house; that affiant began making inquiry and was informed by Ben Saunders and wife, Mary Saunders, that they saw Millard M. Calloway and Harve Church at the warehouse the night it was burned, heard them knocking and firing off guns, also one Moretz, and one or two others stated that they had seen these parties there.

Upon this information the affiant procured a warrant for larceny from a justice of the peace of Watauga County, N. C., against the above-named Calloway and Church; had them arrested thereon and placed in jail. Affiant also obtained a search warrant and found four of the stolen barrels of whisky in a stillhouse in the possession of Calloway, and two barrels in Harve Church's spring house. That thereupon a warrant for robbery of the warehouse was issued by W. L. Bryant, United States commissioner, and they were bound to the United States court for the western district of North Carolina, held at Statesville, N. C., and at April term, 1896, were tried and convicted of robbing the distillery warehouse of John A. Denny, and duly sentenced therefor.

That during the progress of said trial Harve Church, one of the defendants, went upon the witness stand and swore that he with Calloway had robbed said warehouse and hauled the liquor away and put such as was discovered where it was. That they had destroyed five barrels at a certain place, which he described, and that affiant with George Carroll, constable, afterwards went to this place and found a lot of hoops and broken and chopped up staves and barrel heads. When asked about the balance of the liquor he stated that he supposed that they had drunk it, sold it, and given it away. That the six barrels which affiant, together with George Carroll, constable, found was held by affiant until J. C. Horton, deputy collector, came, when the same was turned over to him, one barrel of which, as affiant was afterwards informed, was stolen from him, and the other five sold for taxes.

That affiant has never had any benefit from or received one cent from any of the 14 barrels of whisky, or any part thereof, which were in the warehouse at the time it was burned, but has been put to quite a considerable amount of trouble and expense in reclaiming the whisky which was found and turned over to the government officer, and in the prosecution and conviction of the parties guilty of the robbery.

JOHN A. DENNY.

Sworn to and subscribed before me this the 16th day of March, 1908.

C. H. SOMERS,  
*Clerk Superior Court.*

By D. R. EDWARDS,  
*Deputy Clerk.*

TREASURY DEPARTMENT,  
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,  
*Washington, January 24, 1910.*

SIR: Referring to office letter addressed to you under date of the 20th instant concerning House bill 9447, for the relief of John A. Denny, in which you were advised that a letter had been addressed to the collector for information as to the amount of proceeds, and application thereof, of the sale of certain packages of distilled spirits seized and sold, I have the honor to advise you that a letter has been received from Collector Brown, in which he makes the following report:

"Relative to 6 barrels of whisky concealed near the warehouse of John A. Denny, which were seized, the record 44 shows 6 barrels seized on August 17, 1895, with note that Deputy Collector Horton reported 1 barrel lost on August 19, 1895, the 5 barrels having been sold January 20, 1896; gross proceeds, \$264.12; tax, \$234.30; other expenses, \$55.06; leaving a deficiency of \$25.24. While it appears from note on record 44 that, under authority of office letter of August 28, 1895, the net proceeds were to be applied on assessed taxes, the result of the proceeds did not leave any net proceeds to so apply.

"The original assessment on the July list, 1895, was for \$694.76, there being a credit of \$25 September 11, 1895, leaving a balance of \$669.76, as stated in office letter, as the sum for which relief is asked by act of Congress."

Respectfully,

R. E. CABEL, *Commissioner.*

HON. C. H. COWLES,  
*House of Representatives, Washington, D. C.*